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Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BLACKSTONE ENERGY, LTD.
FOR**

**Unauthorized Discharges to State Waters, Lands or Storm Drain Systems
AT**

**Eight Mine Sites Located in Lee, Wise and Tazewell Counties
A&G Mine Permit Nos. 1602074 and 11020280; Sigmon Mine Permit No. 1702073;
Black River Coal Mine Permit No. 1402094
Incident Report ("IR") Nos.: 204538 and 292225**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and Blackstone Energy, Ltd., for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Blackstone" means Blackstone Energy, Ltd., a corporation authorized to do business in Virginia and its affiliates, partners and subsidiaries. Blackstone Energy, Ltd. is a "person" within the meaning of Va. Code § 62.1-44.3.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
7. "DMME" means Virginia Department of Mines, Minerals and Energy.
8. "IR" means incident report.
9. "Location" or "Site" means the facility, land, road, storm drain(s) or state water(s) where the oil discharge occurred; specific, numbered Sites are identified below:

Site 1. (A&G) Mine Permit No. 1602074, Lee County
N 36° 52' 33.85"; W -82° 52' 03.85"
3 concrete pad-mounted transformers with oil spill and copper removed.

Site 2. (A&G) Mine Permit No. 1602074, Lee County
N 36° 52' 41.92"; W -82° 52' 10.76"
4 transformers on the ground, with oil spill and copper removed; 3 transformers not damaged.

Site 3. (A&G) Mine Permit No. 1102028, Wise County
N 36° 53' 03.52"; W -82° 51' 50.59"
4 pad-mount and 2 pole-mount transformers, all on the ground, with oil spill and copper removed.

Site 4. (A&G) Mine Permit No. 1102028, Wise County
N 36° 53' 03.36"; W -82° 51' 51.48"
1 pad-mounted transformer, with oil drained.

Site 5. (Sigmon) Mine Permit No. 1702073, Lee County
N 36° 51' 12.70"; W -82° 56' 12.70"
3 pad-mounted transformers, with oil spill and copper removed.

Site 6. (Sigmon) Mine Permit No. 1702073, Lee County
N 36° 51' 15.26"; W -82° 56' 13.53"
6 PCB transformers, sitting upright within earthen berm, with oil spill/saturated berm/some saturated soil areas outside berm.

Site 7. (Sigmon) Mine Permit No. 1702073, Lee County
N 36° 51' 24.07"; W -82° 56' 08.73"
3 transformers (one on pad, two on ground), with oil spill and copper removed.

Site 8. (Black River Coal) Mine Permit No. 1402094, Tazewell County N 37° 12' 1.898"; W 81° 42' 55.858", 3 transformers located within a generator trailer, with copper removed and with stained, saturated soil present outside; nearby, at N 37° 12' 1.048"; W 81° 42' 58.253", 3 additional transformers located on the ground within an open building, with copper removed and stained soil present.

10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code §62.1-44.34:14.
12. "Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Person" means any firm, corporation, association or partnership, one or more individuals, or any government unit or agency thereof.
15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses discharge of oil into waters.
16. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
17. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

SECTION C: Findings of Fact and Conclusions of Law

1. Blackstone Energy, Ltd. owns and operates coal mining operations, including subsidiaries A&G Coal Corporation, Sigmon Coal Company, Inc. and Black River Coal, LLC.
2. On April 26, 2019, the DEQ Southwest Regional Office (SWRO) received notification of a transformer spill at A&G Mine No. 20 in Wise County, Virginia (Site No. 1 above).

3. DEQ staff conducted a site visit on April 29, 2019 and observed 3 pad mounted transformers at A&G Mine No. 20 in Wise County (DMME Permit No. 1602074) that were overturned, with oil spilled on the ground and copper removed. DEQ staff also learned that at least three additional sites (for a total of two sites each in Wise and Lee Counties, all at mines near the Lee/Wise County line) had also been vandalized, with overturned or drained transformers. DEQ assigned IR No. 204538 to this incident. DEQ coordinated with DMME, who assisted in gaining access to some of the sites.
4. On April 30, 2019, DEQ staff and Virginia Department of Emergency Management ("VDEM") staff returned to the site to perform field tests for PCBs in the oils from overturned transformers and discovered 10 additional transformers with oil spilled and copper removed. One additional, pad mounted transformer was present; oil had been drained from this transformer. A total of 14 vandalized transformers were found at the four A&G Sites mentioned (Sites 1 – 4, as defined and identified in Section B).
5. On May 1, 2019, DEQ staff met with representatives of both American Environmental and Virginia Fuels at the Sigmon (Calvin Prep Plant) Mine (Mine Permit No. 1702073) in Lee County. The group observed 6 transformers overturned (3 each at two different locations), with oil spilled. An additional 6 transformers, located within an earthen berm, were observed with labels indicating that the transformers contained PCBs. Possible PCB oil was observed on the ground surface around these transformers within the berm. The berm itself did not appear to have been breached, but areas of the berm wall appeared to be saturated, with seepage and areas of oil-saturated soil present outside the berm. A total of 12 vandalized transformers were found at the three Sigmon mine sites mentioned (Sites 5 – 7, as defined and identified in Section B).
6. An estimated 5,000 gallons of transformer oil was spilled by the vandalism of the 26 transformers noted at seven Sites at three DMME permitted mines (as defined and identified in Section B). Vandalism at one site had been reported to the Lee County Sheriff's Department in February, 2019.
7. On July 25, 2019, Blackstone submitted documentation regarding the reporting of vandalism of three transformers that had occurred on February 23, 2019 to the Lee County Sheriff's Department, as mentioned in Item 6, above.
8. On August 5, 2019, DEQ staff spoke with a consultant contacted by Blackstone regarding the transformer spills noted above. A draft Environmental Action Plan for cleanup and remediation of the seven Sites identified was then submitted to DEQ by the consultant on August 14, 2019.
9. On August 22, 2019, DEQ issued NOV No. NOV-007-0819-WA for the unpermitted discharge of approximately 5,000 gallons of transformer oil to state waters, lands or storm drain systems at seven identified Sites within the Commonwealth.
10. On September 24, 2019, DEQ staff met with DMME staff and inspected a Black River Coal, LLC Mine (Mine Permit No. 1402094) in Tazewell County. Three transformers located within a generator trailer had had copper removed, with stained, saturated soil present outside; three additional transformers were located on the ground within an open building nearby, with copper removed and stained soil present. DEQ assigned IR No. 292225 to this incident, with an estimate of 100 to 400 gallons of oil spilled. Using a figure of 200 gallons

for this Site, an approximate total of 5,200 gallons of oil may have been released at the eight Sites. Although not cited in an NOV, this Site (Site 8) is included in this Consent Order.

11. On October 10, 2019, Blackstone's consultant submitted a project update to DEQ, with soil sample results for TPH and PCBs for Sites 1 – 6. Analytical data for Site 7 was submitted on October 15, 2019. No analytical data has been received for Site 8.
12. A review of DEQ files indicates that the DEQ had issued no permits or certificates to Blackstone for the unauthorized discharges of oil into or upon state waters, lands, or storm drain systems within the Commonwealth.
13. Virginia Code § 62.1-44.34:18. Discharge of oil prohibited; liability for permitting discharge. C. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, or from which there is a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or from which there is a substantial threat of such discharge, shall be liable to: 1. The Commonwealth of Virginia or any political subdivision thereof for all costs and expenses of investigation, containment and cleanup incurred as a result of such discharge or threat of discharge, including, but not limited to, reasonable personnel, administrative, and equipment costs and expenses directly incurred by the Commonwealth or political subdivision, in and for preventing or alleviating damage, loss, hardship, or harm to human health or the environment caused or threatened to be caused by such discharge or threat of discharge; 2. The Commonwealth of Virginia or any political subdivision thereof for all damages to property of the Commonwealth of Virginia or the political subdivision caused by such discharge;...
14. Based on the results of April 29, 2019, April 30, 2019, May 1, 2019 and September 24, 2019 field investigations and follow-up inspections, and documentation submitted on July 25, 2019, August 14, 2019, October 10, 2019 and October 15, 2019, the Board concludes that Blackstone has violated Va. Code § 62.1-44.34:18, as described in paragraphs C(2) through C(10), above.
15. In order for Blackstone to complete its return to compliance, DEQ staff and representatives of Blackstone have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.34:20, the Board orders Blackstone Energy, Ltd., and Blackstone Energy, Ltd. agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$20,350.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Blackstone Energy, Ltd. shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Blackstone Energy, Ltd. shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Blackstone for good cause shown by Blackstone, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. NOV-007-0819-WA, dated August 22, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Blackstone admits the jurisdictional allegations, findings of fact and conclusions of law contained herein.
4. Blackstone consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Blackstone declares that it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Blackstone to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Blackstone shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Blackstone shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Blackstone shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Blackstone. Nevertheless, Blackstone agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Blackstone has completed all of the requirements of the Order;
 - b. Blackstone petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Blackstone.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Blackstone from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Blackstone and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Blackstone certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Blackstone to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Blackstone or his/her designee.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Blackstone voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 01st day of October, 2020.



Jeffrey L. Hurst, Regional Director
Department of Environmental Quality

APPENDIX A SCHEDULE OF COMPLIANCE

In order to comply with the provisions of the State Water Control Law and the Regulations, Blackstone Energy, Ltd. shall complete the following actions, as they relate to Transformer Spill Sites 1 – 8, as defined in Section B of this Consent Order, by the dates noted below:

1. Excavate all impacted soils at each site; complete no later than 30 days after execution of the Consent Order;
2. Collect confirmatory samples from each excavation to demonstrate complete removal of all impacted soils at each site; excavate additional soils and collect new confirmatory samples if necessary; complete no later than 90 days after execution of the Consent Order;
3. Submit all sampling analytical results for all sites to DEQ; complete no later than 105 days after execution of the Consent Order; and
4. Provide manifests and tipping receipts to demonstrate proper disposal of all impacted soils/media generated; complete no later than 150 days after execution of the Consent Order.
5. Unless otherwise specified in this Order, Blackstone Energy Ltd. shall submit all requirements of Appendix A of this Order to:

Ralph T. Hilt
Enforcement/Compliance Specialist, Sr.
Virginia DEQ – Southwest Regional Office
355-A Deadmore Street
Abingdon, Virginia 24210
phone: (276) 676-4878
fax: (276) 676-4899
e-mail: ralph.hilt@deq.virginia.gov